

ESTTA Tracking number: **ESTTA348300**

Filing date: **05/19/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91188256
Party	Plaintiff The Susan G. Komen Breast Cancer Foundation, Inc.
Correspondence Address	John M. Cone Hitchcock Evert LLP PO Box 131709 Dallas, TX 75313-1709 UNITED STATES jccone@hitchcockevert.com
Submission	Motion to Compel Discovery
Filer's Name	John M. Cone
Filer's e-mail	jccone@hitchcockevert.com, docket@hitchcockevert.com
Signature	/s/ John M. Cone
Date	05/19/2010
Attachments	100519 Motion to Compel.pdf (4 pages)(13740 bytes) 100519 Motion To Compel Exhibit A.pdf (10 pages)(232916 bytes) 100519 Motion To Compel Exhibit B.pdf (15 pages)(371688 bytes) 100517 Motion To Compel Exhibit C.pdf (12 pages)(665784 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77/341,034 HYDRATE FOR THE CURE

<hr/> THE SUSAN G. KOMEN BREAST CANCER FOUNDATION, INC. d/b/a SUSAN G. KOMEN FOR THE CURE,	§	
	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. 91188256
	§	
ANDREW J. COVAULT,	§	
	§	
Applicant.	§	

TO THE HONORABLE TRADEMARK TRIAL AND APPEAL BOARD

**OPPOSER’S MOTION UNDER 37 C.F.R. § 2.120(e) FOR ORDER
COMPELLING APPLICANT TO ANSWER INTERROGATORIES AND
TO PRODUCE DOCUMENTS FOR INSPECTION AND COPYING**

Opposer The Susan G. Komen Breast Cancer Foundation, Inc. d/b/a Susan G. Komen for the Cure files this motion to compel answers to written discovery requests that were duly served on Applicant and in support would respectfully show the Board as follows:

In accordance with the Board’s Scheduling Order of October 30, 2009, Discovery opened in this opposition on November 30, 2009 and is set to close on May 19, 2010.

Opponent served its Initial Disclosures on November 20, 2009.

On December 1, 2009, Opponent served Opposer’s First Set of Interrogatories to Applicant (the “Interrogatories”) and Opposer’s First Requests for Production to Applicant (the “Requests”) by mail on Applicant. Copies of the Interrogatories and the Requests are attached hereto as Exhibits A and B respectively.

Responses to the Interrogatories and Requests were due under Fed. R. Civ. P. 33, 34 on December 31, 2009, with an additional five days added under 37 C.F.R. § 2.119(c).

No response to the Interrogatories and Requests was received by the due date. Nor did Applicant request an extension of the time for responding.

On January 20, 2010, Opposer's attorney wrote to Applicant pointing out that no responses had been filed and stating that Opposer intended to file a motion to compel unless responses were received by January 29, 2010.

On February 1, 2010, Applicant sent an email to Opposer's attorney stating that his failure to respond had been caused by the ill-health and untimely death of his wife on January 21, 2010 and that he therefore needed 60 days extension. Opposer's counsel responded that in the circumstances Komen would agree to the extension.

By May 2010, however, no responses or further request for extension had been received from Applicant and Opposer's attorney wrote on May 6, 2010 reminding Applicant that he had not responded to the Interrogatories and Requests and stating that Opposer intended to file a motion to compel unless the responses were received by May 10. When no response to the letter of May 6 was received, Opposer's counsel followed up by email on May 13, 2010. Applicant replied by email on May 14, inviting Opposer to go ahead with its motion. Copies of the parties' correspondence are attached hereto as Exhibit C.¹

Opposer requests that the Board order Applicant to answer the Interrogatories and Requests forthwith. By failing to object to the discovery, or request an extension before the due date of January 5, 2009, Applicant waived any right to object to the

Interrogatories or Requests. Fed. R. Civ. P. 33(b)(4). The Board has broad discretion in determining whether objections have been waived by a failure to respond, that discretion should be in favor of Opposer. Several reminders have been sent to the non-responding party, a request for an extension of time to respond has been acceded to and yet no answers have been provided more than four months after the original due date.

The Board should order Applicant to answer the Interrogatories and Requests and to produce responsive documents for inspection and copying fully and without objections.

Dated: May 19, 2010

Respectfully submitted,

/s/ John M. Cone

John M. Cone
Hitchcock Evert LLP
P.O. Box 131709
Dallas, Texas 75313-1709
(214) 880-7002 Telephone
(214) 953-1121 Facsimile
jccone@hitchcockevert.com

ATTORNEY FOR OPPOSER THE
SUSAN G. KOMEN BREAST CANCER
FOUNDATION, INC. d/b/a SUSAN G.
KOMEN FOR THE CURE

¹ In Exhibit C, parts of the correspondence discussing settlement have been redacted.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May 2010, a true and correct copy of the foregoing document was served via U.S. First Class Mail, postage prepaid on Applicant Andrew J. Covault, 7615 Southwold Ct., Cumming, GA 30041-8314.

/s/ John M. Cone

Exhibit A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77/341,034 HYDRATE FOR THE CURE

**THE SUSAN G. KOMEN BREAST
CANCER FOUNDATION, INC., D/B/A
SUSAN G. KOMEN FOR THE CURE**

Opposer,

v.

ANDREW J. COVAULT,

Applicant.

§
§
§
§
§
§
§
§
§
§

Opposition No. 91188256

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Opposer, The Susan G. Komen Breast Cancer Foundation, Inc. d/b/a Susan G Komen for the Cure ("Komen") hereby serves its First Set of Interrogatories to Applicant and pursuant to the Rules, requests that Applicant's responses be served upon the undersigned within thirty-five (35) days of service of these Interrogatories.

DEFINITIONS

A. "Komen" or "Opposer" means the named Opposer, together with the directors, officers, employees, attorneys, agents and representatives and other personnel of The Susan G. Komen Breast Cancer Foundation, Inc. d/b/a/ Susan G. Komen for the Cure

B. "Applicant" means the named applicant, employees, attorneys, agents and representatives and other personnel of the named applicant.

C. "Person" or "Persons" means any individual, association, partnership, corporation, firm, organization or entity.

D. The word "or" means "and/or" and the word "and" means "and/or."

E. "Document" or "Documents" means the original and all identical copies of written, printed, typed and visually or orally reproduced material of any kind, whether or not privileged, which are in the possession, custody or control of Applicants, including, but not limited to, contracts, agreements, memoranda, assignments, licenses, minutes of meetings, minute books, books of account, orders, invoices, receipts, statements, computation sheets, notebooks, diaries, reports, photographs, drawings of any kind, tracings, blueprints, microfilm, photostats, sketches, charts, catalogues, brochures, advertising and promotional literature, bulletins, cables, telegrams, letters, notes, instructions, reports, test data, and any other similar materials.

F. The term "things" as used herein shall refer to any tangible object, including audio recordings, video recordings and the like, which may for some reason be construed as something other than a document.

G. "Identify" or "identification" with respect to a person or persons means to state:

- 1) the full name;
- 2) the title;
- 3) the present address, if known, or if not, the last known address;
- 4) the employer or business affiliation of such person(s); and
- 5) the employment duties, functions and responsibilities of such person or persons.

H. "Identify" or "identification" with respect to a company means to state:

- 1) the name;

- 2) the place of incorporation, if incorporated;
- 3) the principal place of business; and
- 4) the identity of the person or persons having knowledge of the matter with respect to which the company is named.

I. "Identify" or "identification" with respect to a government agency, organization or other government entity means to state:

- 1) the name;
- 2) the municipality, city, county, state or other entity by and/or for which the organization serves;
- 3) the principal place of business;
- 4) the purpose of the organization; and
- 5) the identity of the person or persons having knowledge of the matter with respect to which the organization is named.

J. "Identify" or "identification" with respect to a document means to state:

- 1) the title of the document;
- 2) the date of the document;
- 3) the name of the person or persons who signed, prepared, or participated in the preparation of such document;
- 4) the name of the person to whom the document was addressed;
- 5) the name of each person to whom the document was given or sent, or who received such document or a copy thereof;
- 6) the identity of each person having possession, custody, control or effective control of the document or thing; and

7) the nature and subject matter of the document or thing.

In lieu of such identification, Applicants may simply provide a copy of the document with their answers to these interrogatories and indicate on the document copy which interrogatory or sub-interrogatory the document is being produced in response to.

K. "Identify" or "identification" with respect to a thing means to state:

- 1) a description of the thing;
- 2) where the thing is located; and
- 3) the identity of the person or persons who have possession or control of the thing.

In lieu of such identification, Applicants may simply provide photographs or other illustrative replicas of the thing with their answers to these interrogatories and indicate on the photograph or replica which interrogatory or sub-interrogatory the same is being produced in response to.

L. "Identify" or "identification" with respect to an event means to state:

- 1) the date of such event;
- 2) the location of such event; and
- 3) the identity of each person present at the event.

M. "Including" means "including but not limited to."

N. "Date of first use" refers to the date of first use in the United States unless otherwise stated.

O. "Commerce" refers to interstate commerce or commerce between the United States and a foreign country.

P. "Services" means "products, goods or services."

Q. "On" and "in connection with" mean "on or in connection with."

R. "Relating to" means "relating to, reflecting, supporting, evidencing, discussing, showing, summarizing, analyzing, containing, pertaining to, or concerning in any way, directly or indirectly."

S. "Communication" or "communications" means any contact or act, the purpose or effect of which is to convey information or knowledge, including, but not limited to, written contact by letters, memoranda, financial reports, telecopies, telegrams, telexes, or by any documents, and oral contact by such means as face-to-face meetings, telephone conversations, or recorded telephone messages.

T. The singular includes the plural and the plural includes the singular.

U. "Advertising materials" means any and all advertising or promotional materials, including, but not limited to, brochures, catalogs, inserts, phone directories, Yellow Pages advertisements or listings, radio and television commercials, signage and packaging materials, labels, hang tags, decals or other indicia.

INTERROGATORIES

INTERROGATORY NO. 1:

When and how did you select the trademark HYDRATE FOR THE CURE?

RESPONSE:

INTERROGATORY NO. 2:

Describe the commercial impression, connotation, meaning and/or message intended by your use of the trademark HYDRATE FOR THE CURE.

RESPONSE:

INTERROGATORY NO. 3:

When and how did you first use the trademark HYDRATE FOR THE CURE?

RESPONSE:

INTERROGATORY NO. 4:

Identify when Applicant first had any knowledge of Opposer and Opposer's use of any "_____ FOR A CURE" or "_____ FOR THE CURE" trademark.

RESPONSE:

INTERROGATORY NO. 5:

Identify all revenues received by Applicant from its use of the trademark HYDRATE FOR THE CURE and how Applicant disposed of such revenues.

RESPONSE:

INTERROGATORY NO. 6:

Identify all goods you have sold under the trademark HYDRATE FOR THE CURE.

RESPONSE:

INTERROGATORY NO. 7:

Identify the trade channels through which the goods identified in your answer to Interrogatory No. 6 passed to their ultimate users.

RESPONSE:

INTERROGATORY NO. 8:

What are the demographics of the ultimate users of the goods identified in your answer to Interrogatory No. 6?

RESPONSE:

INTERROGATORY NO. 9:

Identify every way in which you have advertised or promoted your goods under the trademark HYDRATE FOR THE CURE.

RESPONSE:

INTERROGATORY NO. 10:

State the amounts spent, month by month, on advertising or promoting the trademark HYDRATE FOR THE CURE.

RESPONSE:

INTERROGATORY NO. 11:

State the prices at which goods under your trademark HYDRATE FOR THE CURE have been sold to the ultimate user.

REPSONSE:

INTERROGATORY NO. 12:

Describe the intended use(s) for all goods you have sold under the trademark
HYDRATE FOR THE CURE.

RESPONSE:

Dated: December 1, 2009

Respectfully submitted,



John M. Cone
Hitchcock Evert LLP
P.O. Box 131709
Dallas, Texas 75313-1709
(214) 880-7002 Telephone
(214) 953-1121 Facsimile
jccone@hitchcockevert.com

ATTORNEY FOR OPPOSER THE
SUSAN G. KOMEN BREAST CANCER
FOUNDATION, INC. D/B/A SUSAN G.
KOMEN FOR THE CURE

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December 2009, a true and correct copy of the foregoing document was served via U.S. First Class Mail, postage prepaid on Applicant Andrew J. Covault, 7615 Southwold Ct., Cumming, GA 30041-8314.

A handwritten signature in black ink, appearing to read "J. M. Cone", is written over a horizontal line.

John M. Cone

Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77/341,034 HYDRATE FOR THE CURE

**THE SUSAN G. KOMEN BREAST
CANCER FOUNDATION, INC., D/B/A
SUSAN G. KOMEN FOR THE CURE**

Opposer,

v.

ANDREW J. COVAULT,

Applicant.

§
§
§
§
§
§
§
§
§
§

Opposition No. 91188256

OPPOSER'S FIRST REQUESTS FOR PRODUCTION TO APPLICANT

The Susan G. Komen Breast Cancer Foundation, Inc. d/b/a Susan G. Komen for the Cure, Opposer in the above referenced matter serves these Requests for Production on Applicant, Andrew J. Covault pursuant to Rule 2.120(d) of the Trademark Rules of Practice and pursuant to Rule 34 of the Federal Rules of Civil Procedure. Applicant shall produce responsive documents where they are maintained in the ordinary course of business, or at such other location as the parties may agree. Production is due within thirty-five (35) days of service of these Requests.

DEFINITIONS

A. "Komen" or "Opposer" means the named Opposer, together with the directors, officers, employees, attorneys, agents and representatives and other personnel of The Susan G. Komen Breast Cancer Foundation, Inc. d/b/a Susan G. Komen for the Cure

B. "Applicant" means the named applicant, employees, attorneys, agents and representatives and other personnel of the named applicant.

C. "Person" or "Persons" means any individual, association, partnership, corporation, firm, organization or entity.

D. The word "or" means "and/or" and the word "and" means "and/or."

E. "Document" or "Documents" means the original and all identical copies of written, printed, typed and visually or orally reproduced material of any kind, whether or not privileged, which are in the possession, custody or control of Applicants, including, but not limited to, contracts, agreements, memoranda, assignments, licenses, minutes of meetings, minute books, books of account, orders, invoices, receipts, statements, computation sheets, notebooks, diaries, reports, photographs, drawings of any kind, tracings, blueprints, microfilm, photostats, sketches, charts, catalogues, brochures, advertising and promotional literature, bulletins, cables, telegrams, letters, notes, instructions, reports, test data, and any other similar materials.

F. The term "things" as used herein shall refer to any tangible object, including audio recordings, video recordings and the like, which may for some reason be construed as something other than a document.

G. "Identify" or "identification" with respect to a person or persons means to state:

- 1) the full name;
- 2) the title;
- 3) the present address, if known, or if not, the last known address;
- 4) the employer or business affiliation of such person(s); and

- 5) the employment duties, functions and responsibilities of such person or persons.

H. "Identify" or "identification" with respect to a company means to state:

- 1) the name;
- 2) the place of incorporation, if incorporated;
- 3) the principal place of business; and
- 4) the identity of the person or persons having knowledge of the matter with respect to which the company is named.

I. "Identify" or "identification" with respect to a government agency, organization or other government entity means to state:

- 1) the name;
- 2) the municipality, city, county, state or other entity by and/or for which the organization serves;
- 3) the principal place of business;
- 4) the purpose of the organization; and
- 5) the identity of the person or persons having knowledge of the matter with respect to which the organization is named.

J. "Identify" or "identification" with respect to a document means to state:

- 1) the title of the document;
- 2) the date of the document;
- 3) the name of the person or persons who signed, prepared, or participated in the preparation of such document;
- 4) the name of the person to whom the document was addressed;

- 5) the name of each person to whom the document was given or sent, or who received such document or a copy thereof;
- 6) the identity of each person having possession, custody, control or effective control of the document or thing; and
- 7) the nature and subject matter of the document or thing.

In lieu of such identification, Applicants may simply provide a copy of the document with their answers to these interrogatories and indicate on the document copy which interrogatory or sub-interrogatory the document is being produced in response to.

K. "Identify" or "identification" with respect to a thing means to state:

- 1) a description of the thing;
- 2) where the thing is located; and
- 3) the identity of the person or persons who have possession or control of the thing.

In lieu of such identification, Applicants may simply provide photographs or other illustrative replicas of the thing with their answers to these interrogatories and indicate on the photograph or replica which interrogatory or sub-interrogatory the same is being produced in response to.

L. "Identify" or "identification" with respect to an event means to state:

- 1) the date of such event;
- 2) the location of such event; and
- 3) the identity of each person present at the event.

M. "Including" means "including but not limited to."

N. "Date of first use" refers to the date of first use in the United States unless otherwise stated.

O. "Commerce" refers to interstate commerce or commerce between the United States and a foreign country.

P. "Services" means "products, goods or services."

Q. "On" and "in connection with" mean "on or in connection with."

R. "Relating to" means "relating to, reflecting, supporting, evidencing, discussing, showing, summarizing, analyzing, containing, pertaining to, or concerning in any way, directly or indirectly."

S. "Communication" or "communications" means any contact or act, the purpose or effect of which is to convey information or knowledge, including, but not limited to, written contact by letters, memoranda, financial reports, telecopies, telegrams, telexes, or by any documents, and oral contact by such means as face-to-face meetings, telephone conversations, or recorded telephone messages.

T. The singular includes the plural and the plural includes the singular.

U. "Advertising materials" means any and all advertising or promotional materials, including, but not limited to, brochures, catalogs, inserts, phone directories, Yellow Pages advertisements or listings, radio and television commercials, signage and packaging materials, labels, hang tags, decals or other indicia.

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

All documents and things relating to Applicant's selection of the trademark HYDRATE FOR THE CURE and the decision to file an application for registration of that trademark.

RESPONSE:

REQUEST NO. 2:

Representative documents relating to the channels of trade through which Applicant's goods are sold, advertised and marketed under the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 3:

Samples or copies of any and all advertisements and promotional materials, including web pages, bearing Applicant's trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 4:

Any and all documents relating to Applicant's use of the trademark HYDRATE FOR THE CURE on or before November 30, 2007.

RESPONSE:

REQUEST NO. 5:

Any and all documents evidencing any revenues received by Applicant from the sale or distribution of goods under the trademark HYDRATE FOR THE CURE, including but not limited to proof of donations, purchase orders, invoices, sales receipts and credit card receipts.

RESPONSE:

REQUEST NO. 6:

Samples of tags, labels, product packaging, point of sale and other materials that Applicant has used or intends to use, for products distributed under the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 7:

All documents that refer to or evidence Applicant's first knowledge of the Opposer's use of any "_____ For a Cure" or "_____ For the Cure" trademark for any goods or services.

RESPONSE:

REQUEST NO. 8:

All documents and things relating to Applicant's business plans for use of the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 9:

Documents sufficient to identify the total revenues generated from the sales of goods or services under trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 10:

Documents sufficient to show all donations to charities made from revenue received by you from sales of goods under the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 11:

Documents evidencing the date of first use of the trademark HYDRATE FOR THE CURE for (a) drinking vessels which are made to fit in backpack compartments and (b) insulating sleeve holders for beverage cans.

RESPONSE:

REQUEST NO. 12:

Any statements allegedly made by Opposer, including: (a) written statements given, adopted, signed or approved by Opposer; (b) any recording of any statement given by Opposer, or taken without Opposer's knowledge; and (c) transcriptions of any recording of any statement given by Opposer, or taken without Opposer's knowledge.

RESPONSE:

REQUEST NO. 13:

All statements made by any person concerning any part of the subject matter of this opposition proceeding.

RESPONSE:

REQUEST NO. 14:

All agreements and other documents that evidence any rights that Applicant has in the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 15:

All documents referring or relating to Applicant's examination, analysis, opinion, tests, inquiries and consideration of the trademark HYDRATE FOR THE CURE prior to adopting it for use.

RESPONSE:

REQUEST NO. 16:

All documents regarding, referring to, or containing any results of, any survey, poll, search, investigation, or other study undertaken by, or on behalf of, Applicant in connection with the trademark HYDRATE FOR THE CURE, the likelihood of confusion between the Applicant's use of the trademark HYDRATE FOR THE CURE and Opposer or Opposer's trademarks.

RESPONSE:

REQUEST NO. 17:

All complaints from any customer received by Applicant concerning any goods or services distributed under the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 18:

All documents indicating a person has been confused, mistaken, or deceived as to the source of any services or goods sold by Applicant under the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 19:

All documents indicating a person has been in any way confused, mistaken, or deceived as to which entity, Opposer or Applicant, they were referring to or contacting.

RESPONSE:

REQUEST NO. 20:

All documents indicating a person has suggested a belief that, or inquired as to whether, Applicant's goods are offered by, or under the control of, or in any manner related to Opposer, or vice-versa.

RESPONSE:

REQUEST NO. 21:

All documents indicating a person has suggested a belief that, or inquired as to whether, Applicant is licensed, sponsored by, or otherwise associated or connected with Opposer or Opposer's services, or vice-versa.

RESPONSE:

REQUEST NO. 22:

All communications, correspondence, personal notes, documents, or memoranda concerning Applicant or Applicant's use of the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO.23:

All communications, correspondence, and documents of any kind sent to or from Applicant concerning or referencing the use of the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 24:

Your complete file(s) concerning the use of the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 25:

All documents that relate to the consideration of alternative terms, names, or symbols before you selected the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 26:

All documents regarding any investigation, trademark search, trademark clearance, or evaluation concerning Applicant's use of the trademark HYDRATE FOR THE CURE conducted by, or on behalf of, Applicant, prior to its adopting the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 27:

Documents sufficient to identify the date of first use in commerce by Applicant of the trademark HYDRATE FOR THE CURE in the United States.

RESPONSE:

REQUEST NO.28:

All documents relating to Applicant's marketing strategy or promotional strategy involving the use of the trademark HYDRATE FOR THE CURE, and Applicant's business plan for any products or services using the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 29:

All agreements or understandings, actual or contemplated, between Applicant and another person or entity, and involving the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 30:

All agreements or understandings, between Applicant and any third party, licensee, or franchisee which purports to give the third party, licensee, or franchisee the right to use the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 31:

All documents relating or referring to any legal proceeding, actual or contemplated or threatened, involving Applicant and any third party and relating to use of the trademark HYDRATE FOR THE CURE.

RESPONSE:

REQUEST NO. 32:

All documents identified, described, or referred to in Applicant's Initial Disclosures.

RESPONSE:

Dated: December 1, 2009

Respectfully submitted,



John M. Cone
Hitchcock Evert LLP
P.O. Box 131709
Dallas, Texas 75313-1709
(214) 880-7002 Telephone
(214) 953-1121 Facsimile
jccone@hitchcockevert.com

ATTORNEY FOR OPPOSER THE
SUSAN G. KOMEN BREAST CANCER
FOUNDATION, INC. D/B/A SUSAN G.
KOMEN FOR THE CURE

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December 2009, a true and correct copy of the foregoing document was served via U.S. First Class Mail, postage prepaid on Applicant Andrew J. Covault, 7615 Southwold Ct., Cumming, GA 30041-8314.



John M. Cone

Exhibit C

Hitchcock · Evert

John M. Cone, Esq.
(214) 880-7002
jcone@hitchcockevert.com

January 20, 2010

Mr. Andrew Covault
7615 Southwold Court
Cumming GA 30041-8314

**Re: Opposition No. 91188256
HYDRATE FOR THE CURE
Our File: SGK-35385**

Dear Mr. Covault:

On December 1, 2009, I served on your by First Class, Postage Pre-Paid, U.S. Mail Opposer's First Set of Interrogatories to Applicant ("Interrogatories") and Opposer's First Requests for Production to Applicant ("Requests for Production"). Further copies of these are attached for reference.

Your answers to these discovery requests were due on January 4, 2010. It is now January 20, 2010, but I have not received your answers, nor any request from you to extend the time for responding to the discovery requests.

Unless I receive proper responses to the Interrogatories and Requests for Production by January 29, 2010, I intend to file a motion under 37 C.F.R. § 2.120(e) asking the Board to order you to answer.

Very truly yours,



John M. Cone

Enclosures

John Morant Cone

From: acovault@innoworks.com
Sent: Monday, February 01, 2010 7:27 AM
To: John Morant Cone
Cc: acovault@quenchhydration.com; moneal@quenchhydration.com
Subject: Re: Trademark Application for HYDRATE FOR THE CURE
Follow Up Flag: Follow up
Flag Status: Completed

John,

As I expressed in my December 22nd response my wifes condition had become more serious and we were unable to continue treatment as her disease had progressed to far. She made the decision to stay at home for the holidays and enjoy her time with family and our children. We entered in-home hospice on January 10 and she passed away January 21st. We are deeply saddened by this loss as she has been an inspiration to all who fought with her these past 4 years.

Obviously as I stated in the December email I am requesting a 60 extension so that I can focus on our family and young children.

REDACTED

I can notify the patent and trademark office of the extension if Komen agrees.

Andrew J Covault

John Morant Cone wrote:

Dear Andrew:

I sent you a settlement proposal on December 22, see attached copy of my email.

I have not received a reply.

If you are not interested in continuing settlement discussions, please let me know.

In addition, you have not answered my discovery requests, please see attached letter.

5/17/2010

Sincerely,
John Cone.

John M. Cone, PC
Hitchcock Evert LLP
750 North St. Paul Street
Suite 1110
Dallas, Texas 75201
+1-214-880-7002 (direct dial)
+1-214-953-1121 (facsimile)
jcone@hitchcockevert.com

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

5/17/2010

John Morant Cone

From: John Morant Cone
Sent: Wednesday, February 03, 2010 5:48 PM
To: 'acovault@innoworks.com'
Subject: RE: Trademark Application for HYDRATE FOR THE CURE

Dear Mr. Covault:

My sincere condolences on your terrible loss.

I'm sure in the circumstances we can work out an extension of any deadlines to give you time.

I will confirm with Komen and get back to you.

Sincerely,

John Cone

John M. Cone, PC

Hitchcock Evert LLP

750 North St. Paul Street

Suite 1110

Dallas, Texas 75201

+1-214-880-7002 (direct dial)

+1-214-953-1121 (facsimile)

jcone@hitchcockevert.com

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

From: acovault@innoworks.com [mailto:acovault@innoworks.com]
Sent: Monday, February 01, 2010 7:27 AM
To: John Morant Cone
Cc: acovault@quenchydration.com; moneal@quenchydration.com
Subject: Re: Trademark Application for HYDRATE FOR THE CURE

John,

As I expressed in my December 22nd response my wives condition had become more serious and we were unable to continue treatment as her disease had progressed to far. She made the decision to stay at home for the holidays and enjoy her time with family and our children. We entered in-home hospice on January 10 and she passed away January 21st. We are deeply saddened by this loss as she has been an inspiration to all who fought with her these past 4 years.

Obviously as I stated in the December email I am requesting a 60 extension so that I can focus on our family and young children.

REDACTED

REDACTED

I can notify the patent and trademark office of the extension if Komen agrees.

Andrew J Covault

John Morant Cone wrote:

Dear Andrew:

I sent you a settlement proposal on December 22, see attached copy of my email. I have not received a reply.

If you are not interested in continuing settlement discussions, please let me know.

In addition, you have not answered my discovery requests, please see attached letter.

Sincerely,

John Cone.

John M. Cone, PC

Hitchcock Evert LLP

750 North St. Paul Street

Suite 1110

Dallas, Texas 75201

+1-214-880-7002 (direct dial)

+1-214-953-1121 (facsimile)

jcone@hitchcockevert.com

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

5/17/2010

Hitchcock · Evert

John M. Cone, Esq.
(214) 880-7002
jcone@hitchcockevert.com

May 6, 2010

Mr. Andrew Covault
7615 Southwold Court
Cumming GA 30041-8314

**Re: Opposition No. 91188256
HYDRATE FOR THE CURE
Our File: SGKF-35385**

Dear Mr. Covault:

I have heard nothing further from you since we corresponded in February.

In particular, I have not received responses to the Interrogatories and Document Requests served on December 1, 2009.

The discovery cut-off in this opposition is May 19, 2010. Unless I receive satisfactory response to the outstanding discovery by May 10, 2010, I shall have no option but to file a motion to compel those responses. We cannot respond further on settlement until we have proper responses to discovery.

I look forward to your immediate response.

Very truly yours,



John M. Cone

John Morant Cone

From: John Morant Cone
Sent: Friday, May 14, 2010 9:42 AM
To: 'acovault@innoworks.com'
Subject: RE: FW: SGKF-35385 Opposition to HYDRATE FOR THE CURE

Dear Andrew:

I am not prepared to delay obtaining responses to my discovery requests on the grounds that the parties may settle.

While I will pass on your comments to Komen, if I have not received by **Monday, May 17**, full answers to the outstanding Interrogatories and Requests for Production, including copies of any responsive documents and things, I will file a Motion to compel.

Sincerely,

John

John M. Cone, PC

Hitchcock Evert LLP

750 North St. Paul Street

Suite 1110

Dallas, Texas 75201

+1-214-880-7002 (direct dial)

+1-214-953-1121 (facsimile)

jcone@hitchcockevert.com

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

From: acovault@innoworks.com [mailto:acovault@innoworks.com]
Sent: Friday, May 14, 2010 7:48 AM
To: John Morant Cone
Subject: Re: FW: SGKF-35385 Opposition to HYDRATE FOR THE CURE

John,

I have been traveling with the children and will be back in the office on the 19th. Just to clarify I have not lost interest in the mark, far from it, especially with Nicole's passing. We are in the process of forming a foundation in her name to benefit families of woman diagnosed with metastatic cancers.

REDACTED

Given the deadlines we have coming up, I would need to hear back from Komen in the next few days if they would like to pursue a more amicable solution that does not require continued litigation.

Best Regards,

5/17/2010

Andrew J Covault

On 5/13/2010 4:27 PM, John Morant Cone wrote:

Dear Andrew:

Please respond to my letter.

If you have lost interest in HYDRATE FOR THE CURE and are prepared to abandon the trademark application, please let me know.

Regards, John.

John M. Cone, PC

Hitchcock Evert LLP

750 North St. Paul Street

Suite 1110

Dallas, Texas 75201

+1-214-880-7002 (direct dial)

+1-214-953-1121 (facsimile)

jcone@hitchcockevert.com

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

From: John Morant Cone

Sent: Monday, May 10, 2010 2:09 PM

To: 'acovault@innoworks.com'

Subject: FW: SGKF-35385 Opposition to HYDRATE FOR THE CURE

I hope you have received this letter.

I look forward to hearing from you.

John M. Cone, PC

Hitchcock Evert LLP

750 North St. Paul Street

Suite 1110

Dallas, Texas 75201

+1-214-880-7002 (direct dial)

+1-214-953-1121 (facsimile)

jcone@hitchcockevert.com

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

5/17/2010

John Morant Cone

From: acovault@innoworks.com
Sent: Friday, May 14, 2010 10:52 AM
To: John Morant Cone
Subject: Re: FW: SGKF-35385 Opposition to HYDRATE FOR THE CURE
Follow Up Flag: Follow up
Flag Status: Completed

John,

Do what you have to and I will as well to protect my interests. I do believe we have an opportunity to settle this matter if Komen offers a reasonable settlement now.

But I have no problem with our position and in defending it to fruition if we have to.

I look forward to hearing back from Komen.

Andrew

On 5/14/2010 10:42 AM, John Morant Cone wrote:

Dear Andrew:

I am not prepared to delay obtaining responses to my discovery requests on the grounds that the parties may settle.

While I will pass on your comments to Komen, if I have not received by **Monday, May 17**, full answers to the outstanding Interrogatories and Requests for Production, including copies of any responsive documents and things, I will file a Motion to compel.

Sincerely,

John

John M. Cone, PC
Hitchcock Evert LLP

750 North St. Paul Street
Suite 1110

Dallas, Texas 75201

+1-214-880-7002 (direct dial)

+1-214-953-1121 (facsimile)

jcone@hitchcockevert.com

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

From: acovault@innoworks.com [<mailto:acovault@innoworks.com>]
Sent: Friday, May 14, 2010 7:48 AM
To: John Morant Cone
Subject: Re: FW: SGKF-35385 Opposition to HYDRATE FOR THE CURE

John,

I have been traveling with the children and will be back in the office on the 19th.

5/17/2010

Just to clarify I have not lost interest in the mark, far from it, especially with Nicole's passing. We are in the process of forming a foundation in her name to benefit families of woman diagnosed with metastatic cancers.

REDACTED

Given the deadlines we have coming up, I would need to hear back from Komen in the next few days if they would like to pursue a more amicable solution that does not require continued litigation.

Best Regards,

Andrew J Covault

On 5/13/2010 4:27 PM, John Morant Cone wrote:

Dear Andrew:

Please respond to my letter.

If you have lost interest in HYDRATE FOR THE CURE and are prepared to abandon the trademark application, please let me know.

Regards, John.

John M. Cone, PC
Hitchcock Evert LLP

750 North St. Paul Street

Suite 1110

Dallas, Texas 75201

+1-214-880-7002 (direct dial)

+1-214-953-1121 (facsimile)

jcone@hitchcockevert.com

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

From: John Morant Cone

Sent: Monday, May 10, 2010 2:09 PM

To: 'acovault@innoworks.com'

Subject: FW: SGKF-35385 Opposition to HYDRATE FOR THE CURE

I hope you have received this letter.

I look forward to hearing from you.

John M. Cone, PC
Hitchcock Evert LLP

750 North St. Paul Street

Suite 1110

Dallas, Texas 75201

5/17/2010

+1-214-880-7002 (direct dial)
+1-214-953-1121 (facsimile)
jcone@hitchcockevert.com

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

5/17/2010